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SIPDIS

DEPARTMENT FOR WHA/CEN BOYNTON

E.O. 12958: N/A

TAGS: PHUM CS

SUBJECT: PRIMER ON THE INTER-AMERICAN COURT OF HUMAN RIGHTS

REF: SAN JOSE 1544

1. Summary: This cable briefly describes the organization, and procedures of the Inter-American Court of Human Rights, as well as the Court's relationship to the Inter-American Commission on Human Rights. Reftel describes the progress of an actual recent case in the court brought against Venezuela. End Summary.

History

2. The Organization of American States adopted the American Convention on Human Rights at the Inter-American Specialized Conference on Human Rights in 1969. Twenty-five nations have ratified the treaty to date, with the notable exceptions of the U.S. and Canada, and the treaty is binding on these nations. The Convention created two entities to promote the observance and protection of human rights: the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court). The Court held its first hearing in 1979. It is located in San Jose, Costa Rica. The Court currently hears about two dozen cases per year.

Organization

3. Seven judges compose the Court, and no two judges can be from the same nation. Candidates to the bench are nominated by member States of the OAS and are elected by the General Assembly. Judges on the Court must be judges in their respective home country and are usually recognized scholars in the field of human rights. They serve a six-year term and may be reelected only once. If no judge on the tribunal is a national of a State being accused before the Court, that State may appoint an ad hoc judge to join the other seven judges for the duration of the case. Judges vote to elect a President, an honorary position entrusted to represent the Court and direct procedure but little else. A Vice-President is also elected in the same manner. Both the President and Vice-President serve for two years.

The Role of the Commission

4. Parties wanting to bring a case before the Court must first file a petition with the Commission alleging a violation of the Convention. The Commission receives hundreds of petitions annually. Petitions may be brought only after the parties have exhausted remedies under domestic law, a frequently contested fact. Alternatively, parties may demonstrate that they were denied access to domestic remedies or that the remedies themselves provide inadequate due process of law.

5. The Commission initially reviews the petition for procedural errors and, if it finds none, requests a response from the government allegedly responsible. After the response is received, the Commission decides whether it considers the petitioner's claims to be valid. Valid claims are investigated to verify facts, including the deposition of witnesses, if necessary. The Commission then prepares a report of its conclusions and makes recommendations, including a time period, for the State to remedy the situation. The report is distributed to the parties only. If no settlement has been reached or the State has failed to act within the specified time period, the Commission may either prepare a second, public report or take the case to the Court. The State may also submit the case to the Court at this point.

Procedure

6. The Court usually meets four times per year, three weeks at a time, to hear cases. The Commission appears before the Court for every case and provides the Court with a copy of the report. At the hearing, the Commission is represented by delegates while the victim and the State retain their own attorneys. Each case is heard over two days, with presentation of witnesses on the first day and oral arguments on the second. Both parties and the Commission may examine witnesses and present oral arguments, and written arguments are due within the month. Decisions are normally issued four months after a hearing and are not subject to appeal, though parties may ask for a clarification of the judgment. Decisions are released only

to the parties who may or may not make them public.

Judgments

17. While past decisions are not binding precedent, they are excellent indicators of how the Court will rule. A judgment includes a timetable for compliance with the Court's orders. Time for compliance varies on a case-by-case basis, depending on the nature of the remedies ordered. After the designated time period, the Court will issue a report on the State's progress. The report indicates which orders the State has completed to the Court's satisfaction and which orders the State has yet to fulfill to comply fully with the judgment. To date, States have usually complied with the Court's orders. Besides the legal obligation imposed by the Convention, additional mechanisms reinforce conformity with the Court's judgments, such as diplomatic pressure and international public opinion.

Comment

18. The Court is a well-funded and efficient institution, residing in an elegant building that includes a newly constructed courtroom equipped with modern interpreter facilities. Hearings are conducted in a professional and punctual manner, and the panel of international judges lends the proceedings an appropriate seriousness. The Embassy continues to enhance our institutional relationship with the Court and to develop contacts among the Court's staff.

19. Prepared by Political Intern Ernesto Schweikert.